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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8991 OF 2019

Suresh Waman Chaudhari and Another PETITIONERS

VERSUS

Rohan Laxman Kale and Others RESPONDENTS

.....
Mr. Parag V. Barde, Advocate for the petitioners
Mr. M. K.Bhosale, Advocate for respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th AUGUST, 2023

ORDER :

1. The petitioners have challenged the order dated 25th January, 2019 passed by the learned Joint Civil Judge, Senior Division, Jalgaon below Exhibit-7 in Civil M. A. No. 314 of 2017, thereby rejecting the application filed by the petitioners under Order 22, Rule 3 of the Civil Procedure Code, for bringing Legal Representatives of deceased respondent No.2, on record.
2. The petitioners filed Special Civil Suit No. 129 of 2009 against the respondents, for specific performance. In the said suit, application Exhibit-82 was filed for publishing suit summons against respondent No.1 in local newspaper. The same was allowed. *Hamdust* was taken by the petitioners of the suit

summons. However, the suit summons could not be published in the newspaper. Hence, the Special Civil Suit No. 129 of 2009 was dismissed by order dated 23rd August, 2017. The petitioners, therefore, filed Civil M. A. No. 314 of 2017 for restoration of the civil suit to its original stage.

3. In the restoration application, notice issued against respondent No.2 returned unserved, along with bailiff report dated 14th February, 2017 that respondent No.2 is dead. On getting knowledge about death of respondent No.2, application Exhibit-7 is filed by the petitioners seeking to bring on record legal heirs of deceased respondent No.2, contending that the petitioners came to know about death of respondent No.2 on 29th November, 2017 and the application is filed within 90 days from the date of knowledge and if at all there is delay in filing the application, the same maybe condoned and legal representatives of deceased respondent No.2 be permitted to be brought on record. The application is rejected by the Trial Court holding that the petitioners have filed the application in casual manner and it is not supported with delay condonation application. It is further held that delay can be condoned for sufficient cause, however, since delay condonation application is not filed by the petitioners and no sufficient cause is pleaded in the application to condone

the delay, the Trial Court proceeded to reject the application. Hence, the present writ petition.

4. Heard learned advocate for the petitioners and learned advocate for respondent No.1. Through served, none appears for respondent No.2 and his heirs. Perused the memo of writ petition, annexures and the impugned order.

5. The Trial Court appears to have adopted hyper technical approach in rejecting the application filed by the petitioners. Learned advocate for the petitioners has rightly relied on "**Sesh Nath Singh V/s Baidyabati Sheoraphuli Co-operative Bank Ltd.,**"AIR 2021 SC 2637, wherein it is held -

“Section 5 of Limitation Act enables Court to admit application or appeal if applicant or appellant as case may be, satisfies Court that he had sufficient cause for not making the application and / or preferring the appeal, within time prescribed. Although, it is general practice to make a formal application under S.5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant / applicant to approach the Court / Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court / Tribunal of its discretion to condone delay, in absence of a formal application. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section.”

6. In view of the aforesaid ratio and in the facts of the

present case, the impugned order cannot be sustained. In the result, following order -

ORDER

- A. Writ petition is allowed.
- B. Impugned order dated 25th January, 2019 passed by the learned Joint Civil Judge, Senior Division, Jalgaon below Exhibit-7 in Civil M. A. No. 314 of 2017 is hereby quashed and set aside.
- C. Application Exhibit-7 is allowed.

**[NITIN B. SURYAWANSHI]
JUDGE**